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6 Attorney for Plaintiffs

ATECH FLASH TECHNOLOGY INC. & SUNUS SUNTEK INC.

RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA. S.J.

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 ATECH FLASH TECHNOLOGY INC. &
11 SUNUS SUNTEK INC.

Case No. 007

02949

PVT

12 Plaintiff,

COMPLAINT FOR DAMAGES

13 vs.

[DEMAND FOR JURY TRIAL]

14 MARTIN C. LIN, YUSHAN WANG, A.K.A.
15 SAMANTHA WANG, AND IMAGE
16 DEVICE INC.

Defendants.

17
18 Comes now Plaintiffs Atech Technology Inc. (hereinafter "Atech"), a California
19 corporation, and Sunus Suntek Inc. (hereinafter "Suntek"), a California corporation, (collectively
20 hereinafter referred to as "Plaintiffs"), through their undersigned counsel, and allege as follows:

21 THE PLAINTIFFS

22 1. Plaintiff Atech is a corporation organized under the laws of the State of California and
23 having its principal place of business at 46045 Warm Springs Blvd., Fremont, CA 94539.
24 Plaintiff Suntek is a corporation organized under the laws of the State of California and having
25 its principal place of business at 46045 Warm Springs Blvd., Fremont, CA 94539. Plaintiff Atech
26 is a division of Suntek and is actively involved in the sale and manufacture of multi-media
27 carders and the peripheral parts and products.

28 THE DEFENDANTS

2. On information and belief, Defendant Martin C. Lin (hereinafter "Lin"), is an individual with primary residence located at 4214 Silver Peak Parkway, Suwanee, GA 30024.

3. On information and belief, Defendant Yushan Wang, also know as Samantha Wang, (hereinafter “Wang”) is an individual with primary residence located at 5339 Prospect Road, #280, San Jose, CA 95129.

4. On information and belief, Image Device Inc. (hereinafter referred to as "Image Device") is a Georgia corporation with its principal place of business at 400 Peachtree Industrial Blvd., Suite 6, Suwanee, GA 30024. On further information and belief, Defendant Image Device uses 5339 Prospect Road, #280, San Jose, CA 95129 as its US headquarter in conducting business.

5. All of the aforesaid defendants are hereinafter collectively referred to as the "Defendants".

JURISDICTION AND VENUE

6. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1332 and the venue is proper 28 U.S.C. §1391 because: (a) Defendant Image Device is foreign corporation and Defendant Lin is a foreign individual, (b) there is complete diversity of citizenship between Plaintiff and Defendants Image Device and Lin , (c) the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs, and (d) a substantial part of the events giving rise to the claim occurred in this district.

COMPLAINT

7. Defendants Lin and Wang started to work for Plaintiff Suntek in or about 1998. Later Defendants Lin and Wang were transferred to Plaintiff Atech and continued to work as a branch manager and marketing manager respectively until March 31, 2006. Plaintiffs are informed and believe, and thereupon allege, that Defendant Lin is the sole shareholder of Defendant Image Device, and both Defendants Lin and Wang are currently working for Defendant Image Device.

8. As a condition for their employment by Plaintiffs Suntek and Atech, Defendants Lin and Wang agreed and acknowledged that certain information such as customer lists, vendor lists, pricing data, sources of supply, and financial data of Plaintiffs constitute valuable proprietary

1 rights and trade secret. Defendants Lin and Wang also agreed that they would not disclose or use
2 Plaintiffs' trade secret without obtaining an authorization or permission from Plaintiffs, and any
3 unauthorized use or disclose of such trade secret would constitute unfair competition.

4 9. Defendants Lin and Wang further agreed that they would not disclose, call on, solicit,
5 or take away any of Plaintiffs' customers after the termination of their employment with
6 Plaintiffs.

7 10. Plaintiffs' customer lists have great economic value in that it contained information
8 not generally known within the trade and represented many years of research and client
9 communications. The customer lists provide any business in the same or similar trade as
10 Plaintiffs with ready and accessible contacts of potential buyers. Plaintiffs have spent substantial
11 amount of time, energy, and money in generating such customer lists, and have made reasonable
12 efforts to insure that the customer lists remained a secret by disclosing the lists only to those
13 employees who needed the information to perform their jobs. Plaintiffs have also made
14 reasonable efforts to insure the secrecy of their customer lists by requesting all employees to
15 agree not to disclose or use Plaintiffs' trade secret without Plaintiffs' prior authorization and
16 advising them of the severe consequence of any such violation.

17 11. In or about January 2006, Defendants Lin and Wang registered a domain name
18 "pixeldevice.com" with the intent to conduct business in the sale of multi-media card readers in
19 direct competition with Plaintiff Atech. Defendants Lin and Wang later abandoned
20 "pixeldevice.com" after they unintentionally revealed the domain name in Plaintiffs' offices.

21 12. In or about March 2006, Defendants Lin and Wang registered a domain name
22 "imagedevice.com" and started to conduct business in the sale of multi-media card readers in
23 direct competition with Plaintiff Atech.

24 13. In or about March 2006 and continuing to present time, Defendants Lin and Wang
25 misappropriated the aforesaid trade secret from Plaintiffs Suntek and Atech, left the employment
26 of Plaintiffs, established Defendant Image Device engaging in the same type of business of
27 Plaintiffs, and started to contact Plaintiffs' customers, including but not limited to Rpssoft Sas,
28 solicit their business on behalf of Defendant Image Device, and divert their purchase from

1 Plaintiffs to Defendant Image Device.

2 14. As a proximate result of the aforesaid misappropriation of Plaintiffs' trade secret by
3 Defendants, Plaintiffs have suffered damages in the nature of lost profits resulting from
4 decreased sales in the sum exceeding \$75,000.00

5 15. Plaintiffs are informed and believe and thereon allege that the aforementioned acts of
6 Defendants were willful, malicious and oppressive in that Defendants misappropriated Plaintiffs'
7 customer lists with the deliberate intent to injure Plaintiffs' business and improve their own
8 business. Plaintiffs are therefore entitled to punitive damages and reasonable attorney fees.

9 16. Defendants' wrongful conduct in misappropriating Plaintiffs' trade secret such as
10 customer lists, unless and until enjoined and restrained by order of this Court, will cause great
11 and irreparable injury to Plaintiffs' business in that Plaintiffs have lost several purchase orders
12 from their customers and will continue to lose accounts or even be driven out of business before
13 this action can be brought to trial.

14 17. Plaintiffs have no adequate remedy at law for the injuries currently being suffered
15 and/or which are threatened in that Defendants will continue to misappropriate the trade secret
16 and Plaintiffs would be required to maintain a multiplicity of legal proceedings to protect their
17 interests.

18 FIRST COUNT

19 [Misappropriation of Trade Secret – Statutory (California Civil Code §3426 *et seq.*)]

20 18. Plaintiffs reallege and incorporate into this cause of action by reference Paragraphs 1-
21 17 of Plaintiffs' general allegations set forth above.

22 SECOND COUNT

23 [Misappropriation of Trade Secret – Common Law]

24 19. Plaintiffs reallege and incorporate into this cause of action by reference Paragraphs 1-
25 17 of Plaintiffs' general allegations set forth above.

26 THIRD COUNT

27 [Breach of Employment Agreement]

28 20. Plaintiffs reallege and incorporate into this cause of action by reference Paragraphs 1-

1 17 of Plaintiff's General Allegations set forth above.

2 FOURTH COUNT

3 [Intentional Interference of Economic Relationship]

4 21. Plaintiffs reallege and incorporate into this cause of action by reference Paragraphs
5 1-17 of Plaintiff's general allegations set forth above.

6 22. Defendants knew of the existing business relationship between Plaintiffs and their
7 customers, including, but not limited to, Rpsoft Sas, in that Defendants Lin and Wang were
8 employed by Plaintiffs and supervised the customer accounts, including, but not limited to
9 Rpsoft Sas, during their employment with Plaintiffs.

10 23. Defendants Lin and Wang started to contact Plaintiffs' customers, including, but not
11 limited to, Rpsoft Sas, represented that Defendants' products were better than those of Plaintiffs,
12 and diverted Plaintiffs' business with those customers to Defendants, all with the intent to harm
13 Plaintiffs financially.

14 24. Defendants' misappropriation of Plaintiff's trade secret and circumvention of
15 Plaintiffs' existing business with their customers constituted an unfair competition in violation of
16 California Business and Profession Code §17200, *et seq.*

17 25. As a result of Defendants' conduct, Plaintiffs' customers, including, but not limited
18 to, Rpsoft Sas, terminated their respective business relationship with Plaintiffs. Plaintiffs have
19 suffered damages in the sum exceeding \$75,000.00.

20 26. The aforementioned acts of Defendants, and each of them, were willful and
21 malicious. Plaintiffs are therefore entitled to punitive damages.

22 FIFTH COUNT

23 [Conspiracy]

24 27. Plaintiffs reallege and incorporate into this cause of action by reference Paragraphs 1-
25 26, inclusive, of the complaint set forth above.

26 28. Plaintiffs are informed and believe, and thereon allege, that in or about January 2006
27 Defendants Lin and Wang agreed and knowingly and willfully conspired between themselves to
28 hinder and injure Plaintiffs' business by setting up a separate company and using Plaintiffs' trade

1 secret to compete against Plaintiffs. Defendants Lin and Wang did the acts and things herein
2 alleged pursuant to, and in furtherance of, the conspiracy and agreement alleged above.

3 29. As a proximate result of the wrongful acts herein alleged, Plaintiffs have been
4 generally damaged in the sum exceeding \$75,000.00.

5 30. At all times mentioned herein, Defendants Lin and Wang knew that their unlawful
6 acts would cause serious damages to Plaintiffs. Notwithstanding this knowledge, Defendants Lin
7 and Wang intentionally, willfully, fraudulently, and maliciously did the things herein alleged to
8 hinder and injure Plaintiffs' business. Plaintiffs are therefore entitled to exemplary or punitive
9 damages.

10 WHEREFORE, Plaintiff prays for judgment against Defendants and each of them as
11 follows:

- 12 1. For damages in the amount not less than \$75,000.00 according to proof;
13 2. For interest on the rate of ten percent per annum on the aforesaid damages from and
14 after April 1, 2006;
15 3. For a temporary restraining order, a preliminary injunction, and a permanent
16 injunction, all requiring Defendants and each of them and her/his/its/their agents, servants, and
17 employees, and all persons, acting under, in concert with, or for her/him/it/them, to refrain from
18 continuing the misappropriation of Plaintiffs' trade secret by ongoing use of Plaintiffs' customer
19 lists;
20 4. For exemplary and punitive damages in an amount appropriate to punish Defendants
21 and each of them and deter others from engaging in similar misconduct;
22 5. For attorney's fees and costs of suit herein incurred; and
23 6. For such other and further relief as the Court may deem just and proper.

24 [PLAINTIFFS DEMAND FOR A JURY TRIAL]

25 Dated: June 5, 2007

26 
27 Yung-Ming Chou
28 Attorney for Plaintiffs
Sunus Suntek Inc. & Atech Flash
Technology Inc.